UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

--X

MAKUHARI MEDIA LLC and :

RYAN RODENBERG, :

Plaintiffs, :

- v. - :

FEDERAL BUREAU OF INVESTIGATION, :

Defendant. :

--X

COMPLAINT

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), to order the production of Federal Bureau of Investigation ("FBI") records concerning the investigation and prosecution of former National Basketball Association ("NBA") referee Tim Donaghy for wire fraud and illegal sports gambling. Defendant FBI has improperly withheld these records despite a properly filed FOIA request.

PARTIES

2. Plaintiff Makuhari Media is a film production company whose documentaries have been viewed by millions worldwide.
3. Plaintiff Ryan Rodenberg, PhD, is an academic who frequently publishes papers and articles for public consumption.
4. Makuhari Media is collaborating with Dr. Rodenberg on a documentary project centered on legal and illegal sports betting.

5. The FBI, a component of the Department of Justice, is an agency of the United States with possession and control of the records sought by plaintiffs.

JURISDICTION AND VENUE

6. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

7. Makuhari Media's principal place of business is New York City and therefore venue is appropriate under 5 U.S.C. § 552(a)(4)(B).

FACTS

Background of Request

8. In July 2007, it was revealed that the Federal Bureau of Investigation ("FBI") was investigating former NBA referee Tim Donaghy as part of a criminal probe. Donaghy was suspected of collaborating with a professional gambler to bet on NBA games, including ones he refereed.

9. In addition to widespread media reports on the matter, then-NBA Commissioner David Stern held a July 2007 press conference to promise full transparency once the FBI concluded its investigation.

10. In August 2007, Donaghy plead guilty to conspiracy to engage in wire fraud and transmitting betting information through interstate commerce.

11. In July 2008, Donaghy was sentenced to 15 months in prison for his participation in the gambling scandal.

12. Donaghy claimed in a court filing that the league routinely encouraged referees to manipulate results in favor of star players or teams. Donaghy further claimed that he began cooperating with prosecutors even before he was charged, and that he provided the government a road

map to widespread misconduct in the NBA.

13. Due to his plea deal, Donaghy's claims regarding NBA corruption were neither proven nor disproven, and therefore remain unresolved nearly a decade later. *See, e.g.* Munson, Lester, "Donaghy's guilty pleas don't answer all the questions," ESPN.com, Aug. 15, 2007, available at http://www.espn.com/nba/columns/story?columnist=munson_lester&id=2976241. (Exhibit E)

FOIA Request and Denial

14. On March 16, 2017, Andrew J. Muscato, a documentary filmmaker and Managing Member of Makuhari Media LLC, filed a joint FOIA request with Dr. Rodenberg, seeking documents relating to the investigation and prosecution of Tim Donaghy (the "Request"). (Exhibit A)

15. The FBI assigned the Request case number 1369410-000.

16. On March 21, 2017, the FBI denied the Request, primarily because it sought information concerning one or more third party individuals without a signed waiver. The FBI also applied exemptions 6 (information that, if disclosed, would invade another individual's personal privacy) and 7C (information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy). (Exhibit B)

17. On March 27, 2017, Plaintiffs' attorney filed an administrative appeal, arguing that the Request had been inappropriately interpreted as a Privacy Act Request when in fact it relates to a specific prosecution and therefore requires no waiver. (Exhibit C)

18. Plaintiffs further appealed on the basis that exemptions 6 and 7C are inapplicable because Mr. Donaghy has no privacy interest due to his public prosecution and conviction, and even if he did, the public interest in determining whether the FBI adequately addressed corruption in the NBA far outweighs Mr. Donaghy's *de minimus* privacy interest. To wit, Mr. Donaghy

has written an autobiographical account of his experience, titled "Personal Foul: A First-Person Account of the Scandal That Rocked the NBA."

Prior Dissemination by the FBI

19. Upon information and belief, relevant segments of the FBI's investigatory file have already been disclosed to members of the public; specifically, to Sean Patrick Griffin, author of a book "Gaming the Game: The Story of the NBA Betting Scandal and the Gambler Who Made It Happen." According to the book's blurb, Dr. Griffin obtained access to witness statements and confidential law enforcement files. (Exhibit F)

20. The foreword of Mr. Donaghy's autobiography was written by former FBI agent Philip Scala, the supervisory special agent who uncovered Donaghy's gambling scheme. Mr. Scala has stated that he believes Donaghy's claims concerning corruption in the NBA. *See* Marzulli, John, "Ex-FBI big bets on Donaghy: NBA dirt charges true, Gambino squad vet says," New York Daily News, August 2, 2008, available at http://www.nydailynews.com/news/crime/ex-fbi-big-bets-donaghy-nba-dirt-charges-true-gambino-squad-vet-article-1.312776. (Exhibit G)

Constructive Denial

21. The FBI acknowledged the administrative appeal in a March 27, 2017 letter. (Exhibit D)

22. By failing to adjudicate Plaintiffs' administrative appeal within twenty working days, the DOJ has constructively denied Plaintiff's access to agency records by failing to produce - or formally deny - Plaintiffs' administrative appeal. 5 U.S. Code § 552(a)(6)(A)(ii).

CAUSE OF ACTION

Violation of the Freedom of Information Act for Wrongful Withholding of Agency Records

23. Plaintiffs repeat and realleges paragraphs 1-22.

24. Defendant FBI has wrongfully withheld agency records requested by Plaintiffs.

25. Plaintiffs have constructively exhausted all administrative remedies.

REQUESTED RELIEF

WHEREFORE, plaintiffs request this Court:

(A) Order defendant to provide access to the requested documents in their entirety;

(B) Expedite this proceeding as provided for in 28 U.S.C. § 1657;

(C) Award plaintiff costs and reasonable attorney fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and

(D) Grant such other and further relief as may deem just and proper.

Dated: April 27, 2017

By: _/s/ Daniel Novack_______________________

Daniel Novack

NY BAR ID: 5010863

Law Office of Daniel R. Novack

4 New York Plaza (2nd Floor)

New York, NY 10004

Phone: (201) 213-1425

Email: Dan@NovackMediaLaw.com

Counsel for Plaintiffs